IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR
&
THE HONOURABLE MR. JUSTICE HARUN-UL-RASHID

WEDNESDAY, THE 8TH AUGUST 2007 / 17TH SRAVANA 1929

RCRev..No. 253 of 2007()

RCA.67/2006 of ADDL. DISTRICT COURT-II, KOZHIKODE
RCP.44/2003 of ADDL.M.C - II.,KOZHIKODE
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REVISION PETITIONERS/APPELLANTS/RESPONDENTS
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1. A.T.MAMMED KOYA, S/O K.P.KASMI,
DOOR NO.18/425, KACHERI AMSOM AND DESOM,
KOZHIKODE DISTRICT.

2. A.T.UMMER KOYA, S/O K.P.KASMI,
DOOR NO.18/425, KACHERI AMSOM & DESOM,
KOZHIKODE DISTRICT.

BY ADV. SRI.P.N.KRISHNANKUTTY ACHAN(SR.)
SRI.K.MOHANAKANNAN

RESPONDENTS: RESPONDENTS/PETITIONERS
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1. P.V.MARIYAMBI, W/O HASSAN KOYA,
PUTHIYATHOPPU, NAGARAM AMSOM AND DESOM,
KOZHIKODE TALUK, KOZHIKODE DISTRICT.

2. P.T.NISAR AHAMMAD, S/O P.V.MARIYAMBI,
PUTHIYATHOPPU, NAGARAM AMSOM AND DESOM,
KOZHIKODE TALUK, KOZHIKODE DISTRICT.

3. P.T.NISVAR HASSAN, S/O P.V.MARIYAMBI,
PUTHIYATHOPPU, NAGARAM AMSOM AND DESOM,
KOZHIKODE TALUK, KOZHIKODE DISTRICT.

4. P.T.NAYIM BACKER, S/O P.V.MARIYAMBI,
PUTHIYATHOPPU, NAGARAM AMSOM AND DESOM,
KOZHIKODE DISTRICT, KOZHIKODE TALUK.

5. P.T.NASIM HASSAN, S/O P.V.MARIYAMBI,
PUTHIYATHOPPU, NAGARAM AMSOM AND DESOM,
KOZHIKODE TALUK, KOZHIKODE DISTRICT.

6. P.T.NOOHA HASSAN, D/O P.V.MARIYAMBI,
PUTHIYATHOPPU, NAGARAM AMSOM AND DESOM,
KOZHIKODE TALUK, KOZHIKODE DISTRICT.

THIS RENT CONTROL REVISION HAVING COME UP FOR ADMISSION ON 08/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.BALAKRISHNAN NAIR &
HARUN-UL-RASHID, JJ.

R.C.R. No. 253 of 2007

Dated 8th August, 2007.

ORDER

Balakrishnan Nair, J.

The revision petitioners are the tenants of the petition schedule building. The respondents were the petitioners before the Rent Controller. The Rent Control Petition was filed by the landlords under Sections 11(2)(b) and 11(3) of the Kerala Buildings (Lease and Rent Control) Act (hereinafter referred to as "the Act"). The Rent Controller allowed the application. The Appellate Authority confirmed it. Hence this revision. The parties are referred to as they are arrayed in the Rent Control Petition, for the sake of convenience.

2. The brief facts of the case of the landlords are the following: They own the petition schedule building. The respondents are in possession of the same as tenants. The monthly rent is Rs.500/-. They have defaulted to pay the rent from March, 2002. Upon receipt of the notice the rent was paid, but without interest and postal expenses. The 4th respondent herein was the 4th petitioner before the Rent Control

Court. He is unemployed and is dependant on the 1st respondent herein. So, he requires the petition schedule building to start a stationery shop. The need is bona fide and he has experience in the business. He has sufficient resources to start the business. So, the building is needed for the said purpose. Hence the application under Sections 11(2)(b) and 11 (3) of the Act.

3. The respondents resisted the application. They submitted that earlier there was a threat of eviction, putting forward the need of the 3rd petitioner for his personal occupation. But, on enhancement of the rent from Rs.300/- to Rs.500/-, further proceedings were dropped. So, this time also, the need under Section 11(3) urged is a convenient ruse to get the rent enhanced. The 4th petitioner has no experience in stationery business. He is already employed in the Gulf countries. He is not dependant on the 1st petitioner. The petitioners are all rich and have many buildings in their possession. The tenants are conducting business in tobacco and beedi leaves in the petition schedule premises. They are mainly depending on the income derived from the said business for their livelihood. They have no other substantial income.

There is no other suitable building in the locality to shift the business. Since the 1st petitioner did not accept the rent sent by money order, the same was deposited before the court.

4. From the side of the petitioners PW1 was examined and Exts.A1 to A16 were marked. On behalf of the respondents RW1 gave evidence and marked Exts.B1 to B6. The Rent Controller allowed eviction on both the grounds. The Appellate Authority also affirmed the same.

5. The learned senior counsel appearing for the revision petitioners mainly attacked the finding of the Appellate Authority under Section 11(3) of the Act. Special reference was made to the 2nd proviso to Section 11(3). which says that eviction shall not be ordered, if the tenant is depending for his livelihood mainly on the income derived from the business carried on in the building and there is no other suitable building available in the locality to carry on such business. The said aspect was considered by the Appellate Authority as point No.3. The Appellate Authority noticed that the averments regarding the benefit of the second proviso to Section 11(3) in the counter statement are vague.

Though, it was alleged that the landlords are in possession of many buildings, material particulars regarding the buildings were not pointed out. No documents or evidence were produced to show the existence of a single vacant building in the possession of the landlords. The evidence of PW1 that no building is in the possession of the landlords remain unshaken in the cross-examination. The Appellate Authority also noticed that in the proof affidavit of RW1, particulars regarding the first proviso to Section 11(3) were not mentioned. Regarding the second proviso the Appellate Authority analysed the materials on record and found that the tenants failed to show that they were mainly depending on the income derived from the business carried on in the petition schedule building for their livelihood. It was also noticed that the second among the tenants has already retired from the partnership and the business is presently run by the first among them, who is the 1st respondent/1st petitioner herein. In the deposition of RW1 it is admitted that from 2001-02 onwards the business is run at a loss. For the financial year 2004-05, the loss was Rs.1,41,431/-. Based on the above admission, the Appellate Authority came to the conclusion that the 1st respondent has

other income for his livelihood. The learned senior counsel attacked the said finding. According to him, the said conclusion of the Appellate Authority is unwarranted. But, the 1st respondent knows the particulars of his income. He could have produced his income tax returns and could have shown that he has no other business and no other income and the only income sustaining him was from the petition schedule building. In the absence of any evidence tendered by the 1st respondent on this point, we feel that the finding of the Appellate Authority that he is not depending on the income from the petition schedule building or he has failed to prove the same, is certainly a plausible view on the facts. Regarding non-availability of convenient building also, there is no evidence. In view of the above position, the Appellate Authority rightly affirmed the finding of the Rent Controller that the 4th respondent herein bona fide requires the building and therefore, rightly ordered eviction under Section 11(3) of the Act. No other points were urged.

6. In the result the Rent Control Revision fails and it is dismissed. The learned senior counsel appearing for the revision petitioners prayed that some time may be granted for vacating the

premises, so that in the meantime the 1st revision petitioner could find out alternate accommodation. Having regard to the facts of the case, the revision petitioners are given six months' time to give vacant possession of the tenanted premises, on condition that they give an undertaking before the Rent Controller by filing an affidavit, stating that they will vacate the premises within six months' from today. They shall also pay the rent payable for the said premises till they give vacant possession of the same. The affidavit shall be filed before the Rent Controller within three weeks from today.

K. BALAKRISHNAN NAIR, JUDGE.

HARUN-UL-RASHID, JUDGE.

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